**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION NO.25106 OF 2006

DATED 22nd DECEMBER, 2006

BETWEEN:

Chintakayala Balamma

… Petitioner

AND

The District Collector, Nellore, Nellore District and others.

… Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

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**ORDER:**

The petitioner seeks a writ of Mandamus declaring the action of the respondents in digging a channel in petitioner's land in survey No.52-3B2 and assigning the tank Poramboke covered by survey No.54 of Sidhamma Kandriga village of Kota Mandal, Nellore District as illegal and arbitrary. He also seeks a consequential direction to third respondent (Mandal Revenue Officer, Kota) to cancel the assignment of land in survey No.54 and evict the fourth respondent from the said land.

The petitioner is allegedly owner of land admeasuring Acs.8.49 comprised in several survey numbers. This land also includes a peace of land admeasuring Acs.0.18 in survey No.52-3B2, adjacent to this, the land in survey No.54 is classified as tank poramboke, which was originally assigned to a person belonging to scheduled caste. The fourth respondent herein allegedly purchased the said land from the assignee and approached respondents 1 to 3 for formation of irrigation channel from Sidhamma tank in survey No.45, admeasuring Acs.4.00, which is allegedly a private tank irrigating Acs.60.00 of lands of those belonging to petitioner's family. The petitioner further alleges that the irrigation channel from the said tank comes up to survey No.51, and there is no channel thereafter. At the behest of the fourth respondent, Respondents 1 to 3 proposed to dig a channel through petitioner's land in survey No.52-3B2. In spite of complaining to the third respondent that the fourth respondent purchased the assigned land, no action was taken for eviction.

At the stage of Admission itself, learned Assistant Government Pleader for Revenue (General-A) sought time and filed a counter affidavit opposing the writ petition. The Mandal Revenue Officer, Kota (MRO), in the counter affidavit, states that the petitioner herein is not the pattadar of land admeasuring Acs.0.18 in survey No.52-3B2. It is a Government land. The entire extent of Acs.4.33 in survey No.52 is not sub-divided and is classified as village site poramboke. The petitioner encroached upon the land and cultivating paddy crop as Sivai Jamadar. The land in survey No.54 is not classified as tank poramboke. It is a patta land adjacent to land in survey No.52 and was sub-divided into survey Nos.54/1 to 54/10. The lands in survey Nos.54/1 to 54/8 and survey No.54/10 are patta lands whereas land in survey No.54/9 admeasuring Acs.0.26 is classified as cart track poramboke. The land belonging to fourth respondent in survey Nos.54/3 to 54/7 admeasuring Acs.1.62 is not tank poramboke. It is

the land belonging to fourth respondent where he is cultivating paddy crops.

It is further stated in the counter affidavit that Sidhamma Kandriga tank in survey No.45 is not private tank. It is a Government tank maintained by Department of Irrigation, having registered ayacut of Acs.32.38. The land in survey No.52 (poramboke land) and the dry lands of fourth respondent in survey No.54 are not included in the registered Ayacut. They have no legal rights to use the water in the tank for the irrigation. The enquiries in the village revealed that a small channel existing in survey No.52, which is encroached by the petitioner, was being used by the fourth respondent for irrigation. The petitioner closed the said channel as if the land in survey No.52 is patta land and causing loss of crop to fourth respondent. As the land in survey No.52 is Poramboke land, the Government has right to close the channel if required in the said land. As the fourth respondent raised paddy crop, the closure of the channel by the petitioner resulted in drying up of crops in the land of the fourth respondent.

The petitioner filed a reply affidavit traversing adverse counter allegations. She states that she obtained pattadar pass book (PPB)/title deed in respect of the land admeasuring Acs.8.49 in various survey numbers including the land in survey No.52-3B2 admeasuring Acs.0.18, that the adangal and extract of 10(1) account also shows that the petitioner is owner of the land and that her land in survey No.52-3B2 is nothing to do with survey No.52. The allegation that there is a channel in survey No.51 is denied asserting that unless her land is acquired, the channel cannot be dug in her land.

Learned counsel for the petitioner relies on the xerox copy of the PPB in support of the contention that the land in survey No.52-3B2 is patta land and is classified as paddy field. Therefore, he submits that the respondents cannot dig a channel in the petitioner's land. He also points out that a channel is dug up to survey No.51 and survey No.51 being patta land, no channel can be dug. **Per contra**, the learned Assistant Government Pleader refutes these contentions.

The petitioner filed the writ petition alleging that there is existing channel upto survey No.51 and respondents 1 to 3 are proposing to dig a channel in survey No.52-3B2 at request of the fourth respondent, which is in occupation of land in survey No.54. Counter affidavit is filed denying such an allegation. The respondents contend that the petitioner is not pattadar of land in survey No.52-3B2. They also assert that there was existing channel in survey No.52 irrigating the land in survey No.54 belonging to fourth respondent and respondents 1 to 3 also alleged that the petitioner closed the channel in survey No.52. The case of the respondents is not denied. The reference to

the PPB also does not support the case. As seen from the xerox copy of the PPB, it is found that as many as thirty survey numbers/survey sub-division numbers are mentioned. In respect of certain survey numbers including survey No.52-3B2, 'x' mark has been placed, which creates a doubt. In the absence of any other supporting material, the presumption attached to a PPB under Section 6-B of A.P.Rights in Land and Pattadar Pass Books Act, 1971 cannot be implied intoto. Secondly, the respondents admit that the petitioner has encroached the land in survey No.52-3B2. Therefore, if any channel has to be dug in that land, the respondents have either evict the petitioner from the land or dig a channel so that crop if any raised by her is not damaged. Be it made clear that even when the Government land is encroached upon by a person, it is always open to the Government to dig a channel without resorting to any land acquisition. If the land is Government land, it is always open to the Government to dig a channel to facilitate free flow of water by gravitation from a Government source of irrigation to the agricultural fields. In this case, the petitioner and the fourth respondent are not registered as ayacutdars and if they are drawing water from Sidhamma Cheruvu, the respondents should take necessary action after giving notice to them. The fourth respondent is already cultivating wet crops in the land in survey Nos.54/3 to 54/7 and the land in survey No.54/9 (Acs.0.26 is only classified as cart track poramboke). Therefore, it is for the third respondent to take appropriate action in this regard. For any reason, if the patta land is to be used for any public purpose, needless to say, respondents have to follow due process of law.

The writ petition, with the above observations, is disposed of. No costs.

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**(V.V.S.RAO,J)**

22.12.2006.
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